

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Jeffries/Runner Analyst: John Pavalasky Bill Number: AB 2781  
Related Bills: See Legislative History Telephone: 845-4335 Amended Date: August 11, 2008  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Allow Charitable Organization To Make Payments To Certain Individuals Injured Or Killed In An Effort To Protect Life Or Property

### SUMMARY

This bill would, on an ongoing basis, permit certain exempt organizations to collect and disburse charitable contributions for certain individuals, who are injured or killed in an effort to protect life or property, and their families.

### SUMMARY OF AMENDMENTS

The August 11, 2008, amendments replaced the contents of this bill with the provisions discussed in this analysis. This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to achieve the same result under California law that HR 5930 would accomplish for federal income tax purposes if it is enacted. That is, to provide ongoing rules permitting exempt organizations to collect charitable contributions and disburse those funds to certain individuals without losing the organization's tax-exempt status.

### EFFECTIVE/OPERATIVE DATE

This bill is a tax levy and would be operative for taxable years beginning on or after January 1, 2008.

### POSITION

Pending.

### Summary of Suggested Amendments

Technical and substantive amendments are necessary to resolve implementation issues and are attached.

#### Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

#### Department Director

#### Date

Selvi Stanislaus

8/20/08

## **ANALYSIS**

### **FEDERAL/STATE LAW**

Federal and state laws require that to be an exempt charitable organization the organization must be organized and operated exclusively for specified purposes.

To meet this exclusive requirement, it must serve a public rather than a private interest. Thus, to meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

HR 5930 was introduced in the U. S. House of Representatives on April 30, 2008, to allow certain tax-exempt charitable organizations to retain their exempt status when disbursing funds to certain individuals injured or killed while protecting life or property while on duty as a federal, state, or local government employee, or as a member of a qualified volunteer emergency response organization. It was referred to the House Ways and Means Committee and has not had a hearing and has not been enacted.

### **THIS BILL**

This bill would permit certain tax-exempt charitable organizations to collect charitable contributions and disburse those funds, as specified, to the following:

- Individuals injured or killed while protecting life or property while on duty as a federal, state or local government employee, or as a member of a qualified volunteer emergency response organization (called “eligible individuals”) and
- Members of the family of eligible individuals

without losing the organization’s tax-exempt status. This bill would require that the eligible individuals be approved by the Governor in order for the organization to retain its tax-exempt status.

### **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concern. Department staff is available to work with the author’s office to resolve this and any other concern(s) that may be identified.

The purpose of this bill is to achieve the same result under California law that HR 5930 would accomplish for federal income tax purposes if it is enacted. However, subdivision (b) of Sections 17204.5 and 24359.5 restricts the application of these sections based on the Governor approving the eligible individuals while no similar restriction is contained in HR 5930. Additionally, until HR 5930 is enacted at the federal level, an exempt organization will not endanger its federal exempt status by engaging in this activity even if California law is amended to allow that activity. Amendments 11 and 22 resolve these issues by replacing the Governor’s approval restriction with a provision that makes the California treatment contingent on there being a substantially similar federal law for federal income tax purposes for the same taxable year.

## TECHNICAL CONSIDERATIONS

Attached are 20 amendments that are technical corrections to cross-references and drafting style.

## **LEGISLATIVE HISTORY**

SB 41 (Battin, Stats. 2007, Ch. 1) conformed California law to the Fallen Firefighters Assistance Tax Clarification Act of 2006 (Public Law 109-445). This act is specifically with respect to the October 2006 Esperanza Incident fire in southern California and gave permission to charitable organizations to organize distribution of the funds to the families of the fire fighters killed in that fire without risking loss of its California tax-exempt status. The act applies only to payments made on or after October 26, 2006, and before June 1, 2007.

## **PROGRAM BACKGROUND**

In October 2006, after five United States Forest Service fire fighters were killed in the line of duty in Southern California battling the Esperanza Incident fire to protect life and property, a fund was established to help care for the families of these brave men.

Thousands of citizens from across the country donated to this worthy cause. The response was so overwhelming that soon the County of Riverside found itself with approximately \$1 million to distribute to their survivors. The County turned to charitable organizations to help manage these donations.

Local officials were surprised to learn soon thereafter that tax-exempt charitable organizations are not allowed to raise money for a group as small and specific as the families of these five American heroes.

On December 21, 2006, the Fallen Firefighters Assistance Tax Clarification Act of 2006 (Public Law 109-445) was enacted. This act is specifically with respect to the October 2006 Esperanza Incident fire in southern California and gave permission to the charitable organizations to organize distribution of the funds without risking loss of its federal tax-exempt status. The act applies only to payments made on or after October 26, 2006, and before June 1, 2007. California conformed to the federal act in SB 41 (Battin, Stats. 2007, Ch. 1) on February 7, 2007, with respect to the same payment period.

## **OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Just as in California, all of these states conform to the current federal requirement that to be an exempt charitable organization the organization must be organized and operated exclusively for specified purposes.

## **FISCAL IMPACT**

If this bill is amended to resolve the implementation considerations addressed in this analysis, the bill would not significantly impact the department's costs.

## **ECONOMIC IMPACT**

### Revenue Estimate

Based on data and assumptions discussed below, the Personal Income Tax and Corporation Tax revenue loss from this bill would be as follows:

Estimated Revenue Impact of AB 2781 as Amended August 11,2008 Effective On Or After January 1, 2008 Enactment Assumed After June 30, 2008			
	2008-09	2009-10	2010-11
Tax Exemption	No impact	-\$150,000	-\$150,000

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

### Revenue Discussion

This bill targets any charity that would otherwise lose its California tax-exempt status as a result of the dispersal of funds to private individuals. Allowing these entities to retain tax-exempt status would result in an insignificant annual revenue loss, less than \$150,000.

The revenue impact of this bill is determined by the amount of contributions to a specified charitable fund, and the subsequent claim of charitable contribution in the taxable year following the contribution.

In 2006, five firefighters were killed in the line of duty. Thousands of citizens donated approximately \$1 million to a fund for the families of these firefighters.

For a similar donation amount each year in the future, the revenue loss would be \$60,000 annually ( $\$1,000,000 \times 6\%$  marginal tax rate = \$60,000) beginning with the taxable year the itemized deduction is claimed on the tax return (2009-10 FY). The loss would be attributable to itemized deductions claimed for the contributions in the taxable year following the contributions.

## **ARGUMENTS/POLICY CONCERNS**

Until substantially similar provisions are enacted at the federal level, an exempt organization will not endanger its federal tax-exempt status by engaging in this activity even if California law is amended to allow that activity and thus could be considered premature. That is, conforming to federal legislation before it is enacted could create unintended implementation issues if the two enacted laws are not the same.

## **LEGISLATIVE STAFF CONTACT**

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 2781  
As Amended August 11, 2008

AMENDMENT 1

On page 2, line 5, ~~is amended as follows~~ and insert:

is modified to additionally provide

AMENDMENT 2

On page 2, line 7, ~~subdivision (a) of paragraph (1) or (2) of Section 509~~ and insert:

Section 509(a)(1) or Section 509(a)(2)

AMENDMENT 3

On page 2, line 11, after "Section 501 of the Internal Revenue Code" insert:  
or Section 23701

AMENDMENT 4

On page 2, line 18, ~~subdivision (c) of paragraph (3) of Section 139B~~ and insert:

Section 139B(c)(3)

AMENDMENT 5

On page 3, ~~line 14~~ and insert:

eligible individuals or members of their families.

AMENDMENT 6

On page 3, line 24, ~~paragraph~~ and insert:

subparagraph

AMENDMENT 7

On page 3, line 29, after "receive" strikeout "a"

AMENDMENT 8

On page 3, line 36, strikeout "means" and insert:

means, with respect to an eligible individual,

AMENDMENT 9

On page 3, lines 38 and 39, strikeout "subdivision (c) of paragraph (2) of Section 152" and insert:

Section 152(c)(2) of the Internal Revenue Code

AMENDMENT 10

On page 3, line 39 and on page 4, line 1, strikeout "subdivision (c) of paragraph (3) of Section 152" and insert:

Section 152(c)(3) of the Internal Revenue Code

AMENDMENT 11

On page 4, strikeout lines 9 and 10 and insert:

(b) This section shall be operative for contributions received by organizations after the effective date of the act adding this section but only for taxable years for which substantially similar provisions apply for federal income tax purposes.

AMENDMENT 12

On page 4, line 15, strikeout "is amended as follows" and insert:

is modified to additionally provide

AMENDMENT 13

On page 4, line 17, strikeout "subdivision (a) of paragraph (1) or (2) of Section 509" and insert:

Section 509(a)(1) or Section 509(a)(2)

AMENDMENT 14

On page 4, line 21, after "Section 501 of the Internal Revenue Code" insert:  
or Section 23701

AMENDMENT 15

On page 4, line 28, ~~subdivision (c) of paragraph (3) of Section 139B~~ and insert:

Section 139B(c)(3)

AMENDMENT 16

On page 5, ~~strikeout line 6~~ and insert:  
eligible individuals or members of their families.

AMENDMENT 17

On page 5, line 16, ~~strikeout "paragraph"~~ and insert:

Subparagraph

AMENDMENT 18

On page 5, line 21, after "receive" ~~strikeout "a"~~

AMENDMENT 19

On page 5, line 28, ~~strikeout "means"~~ and insert:

means, with respect to an eligible individual,

AMENDMENT 20

On page 5, lines 30 and 31, ~~strikeout "subdivision (c) of paragraph (2) of Section 152"~~ and insert:

Section 152(c)(2) of the Internal Revenue Code

AMENDMENT 21

On page 5, lines 31 and 32, ~~strikeout "subdivision (c) of paragraph (3) of Section 152"~~ and insert:

Section 152(c)(3) of the Internal Revenue Code

#### AMENDMENT 22

On page 6, ~~strikeout lines 1 and 2~~ and insert:

(b) This section shall be operative for contributions received by organizations after the effective date of the act adding this section but only for taxable years for which substantially similar provisions apply for federal income tax purposes.